

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Harrisonburg Division

JENNIFER BERRY,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Civil Action No. 5:21CV00001
	)	
TOWN OF FRONT ROYAL, VIRGINIA,	)	
	)	
	)	
Defendant.	)	

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**PLAINTIFF’S MOTION TO FILE UNDER SEAL**

The Plaintiff, Jennifer Berry, (“Plaintiff”), by counsel, moves the Court pursuant to Rule 9 of the Local Rules of the United States District Court for the Western District of Virginia and the Protective Order entered in this case (ECF 11) for an order permitting her to file under seal certain of the exhibits to be considered along with her Memorandum In Support of Motion for Partial Summary Judgment, and as grounds for her Motion to File Under Seal states as follows:

1. Plaintiff is filing this day a Motion for Partial Summary Judgment. Plaintiff also will submit a Memorandum In Support of the Motion and will attach as exhibits thereto portions of certain deposition transcripts and other exhibits.
2. Certain of the deposition transcripts and other exhibits to be attached to the Memorandum have been designated as confidential under the protective order entered in this case, ECF 11.

3. The portions of the deposition transcripts and some exhibits in the case have been marked as confidential. Pursuant to the protective order, Plaintiff must seek to have the information filed under seal. ECF No. 11. The information is, however, part of a submission in a dispositive motion, and as such, a presumption of First Amendment rights of access attaches. *Covington v. Semones*, 2007 U.S. Dist. LEXIS 28398 \*5 (W.D. Va. April 17, 2007). However, “the presumption of public access attaches to any document filed in support of a motion which the court actually considers, regardless of how trivial the requested action might be.” *Id.*, \*6, 7 (citing *Washington v. Bruraker, et al.*, 2005 U.S. Dist. LEXIS 44958 at \*23 (W.D. Va. March 29, 2005). See *Rushford v. The New Yorker Magazine*, 846 F.2d 249, 253 (4<sup>th</sup> Cir. 1988) (First Amendment presumption of access applies to summary judgment proceedings.)

4. Plaintiff does not believe that any of the exhibits or deposition transcripts submitted in connection with her partial summary judgment motion satisfy the requirements for sealing from the public record. There are other documents which have a confidential designation, but Plaintiff has those same documents in another form and obtained them from the EEOC. This Motion is made pursuant to the terms of the Protective Order, ECF 11, as to the following exhibits or portions thereof:

Exhibit 11: TOWN648 – portion of transcript of Sealock statement given to Bush  
Exhibit 12: Portions of Julie Bush July 6, 2021 Deposition and Deposition Exhibits  
Exhibit 17: TOWN705 (12-3-19 Offer of Promotion to Jones)  
Exhibit 24: TOWN649 (portion of HR transcript of interview with Sealock)  
Exhibit 29: TOWN625-627 (“Investigation Summary Report”)  
Exhibit 31: Todd Jones Deposition Exhibit 11  
Exhibit 33: TOWN 2469 (Todd Jones’s Last Employee Time Sheet-Resigned August 3, 2021)

5. The expected duration for which sealing is required is the time it will take the parties to brief the question and obtain a ruling from the Court.

6. Plaintiff will email the exhibits, to the Court at christel\_kemp@vawd.uscourts.gov for filing and provide an appropriate order for the Court's consideration.

JENNIFER BERRY

By: /s/ Timothy E. Cupp  
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*Counsel for Plaintiff*

#### CERTIFICATE

I hereby certify that on March 14, 2022, I filed the foregoing Motion to File under Seal through the CM/ECF PACER system which will send a copy to defendant's counsel as follows:

Heather K. Bardot, Esquire  
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/s/ Timothy E. Cupp  
Timothy E. Cupp